



METHODOLOGY

Data provided in Issue 3 (January 2021) of the *Sentencing Snapshot* were obtained from sentencing guidelines worksheets submitted to the Maryland State Commission on Criminal Sentencing Policy (MSCCSP) via the Maryland Automated Guidelines System (MAGS) or paper guidelines worksheets for sentences imposed from calendar year (CY) 2017 through CY 2019. A sentencing guidelines worksheet is completed for all sentencing events that originate in and are sentenced in Maryland circuit courts. Additionally, a guidelines worksheet is completed for sentencing events involving jury trial prayers and appeals from the District Court if a pre-sentence investigation (PSI) is ordered. A sentencing event is defined as one defendant, sentenced in front of the same judge, on the same day. A sentencing event may contain multiple offenses from multiple crime categories. These analyses exclude sentencing guidelines worksheets submitted for non-original sentencing events, including sentence reconsideration hearings and three-judge panel reviews. From 2017 through 2019, less than 1% of sentencing events for which a guidelines worksheet was submitted were for sentence reconsideration hearings or three-judge panel reviews. The sentencing guidelines do not apply to violations of probation or parole.

The MSCCSP received guidelines worksheets for 31,960 guidelines-eligible, original sentencing events, including 44,834 guidelines-eligible convicted offenses, sentenced in 2017 through 2019.¹ Sentencing Snapshot #3 focuses specifically on felony narcotic and hallucinogenic drug offenses, classified by the MSCCSP as seriousness category III-B offenses, as defined in Criminal Law Article (CR), §§ 5-602 through 5-606, and as penalized in CR, §§ 5-608(a) and 5-609(a). These offenses include the manufacture, distribution, possession with intent to distribute, and common nuisance violations involving narcotic and select hallucinogenic drugs, including, but not limited to, cocaine, heroin, fentanyl, PCP, and LSD. Certain hallucinogenic drugs were included in the present analyses as the penalty for these drugs and their seriousness category classifications are identical to those for narcotic drugs.² Per CR, §§ 5-608(a) and 5-609(a), the maximum penalty for felony narcotics and hallucinogen offenses is 20 years incarceration. The MSCCSP received guidelines worksheets for 5,181 sentencing events involving 5,740 felony narcotics/hallucinogen offense convictions in 2017 through 2019.³

Per Title 4 of the Courts and Judicial Proceedings Article, circuit courts generally have exclusive jurisdiction over felonies, including felony narcotics/hallucinogen offenses. Unless otherwise provided in law, conspiracies to commit and attempted felonies are classified as misdemeanors in Maryland. Therefore, conspiracies to commit and attempted felony narcotics/hallucinogen offenses may be prosecuted in the District Court, though data indicates that this is rare. According to data obtained from the Maryland Judiciary's Administrative Office of the Courts, approximately 3% of felony narcotics/hallucinogen offenses were prosecuted in the District Court in CY 2019. Approximately 3% of felony narcotics/hallucinogen offenses were jury trial prayers or appeals from the District Court, with no PSI ordered. The remaining 94% of felony narcotics/hallucinogen offense convictions were guidelines-eligible, in that they originated in and were sentenced in circuit courts. The data in this Sentencing Snapshot refer to this final category of guidelines-eligible felony narcotics/hallucinogen offense sentencings. The sentencing guidelines do not apply to cases prosecuted and sentenced in the District Court.

¹ The MSCCSP staff routinely conducts data checks and corrects errors identified in the data. Therefore, the numbers reported in this *Snapshot* may differ slightly from previous *Snapshots*.

² Violations of CR, § 5-602 through 5-606 that involved 750 grams or more of MDMA are not included in the present analyses, though they are penalized under CR, § 5-609(a). These offenses (n=3) were excluded from the present analyses as they are classified under a different seriousness category (III-A) than other felony narcotics/hallucinogen offenses penalized under CR, §§ 5-608(a) and 5-609(a) (which are classified as III-B).

³ Certain felony narcotics and hallucinogen offenses are excluded from this figure, including subsequent drug offenses that carry enhanced penalties and felony narcotics/hallucinogen offenses outside the scope of the sentencing provisions provided in CR, §§ 5-608 and 5-609 (see Table 8, located at the end of this document, for a complete list of felony narcotics/hallucinogen offenses excluded from the present analyses).



Table 1 provides the total number of guidelines-eligible criminal sentencing events and offenses, sentenced from 2017 through 2019 and disaggregated by crime category, for which the MSCCSP received a sentencing guidelines worksheet. Table 2 through Table 6 provide the characteristics of and average sentences for felony narcotics/hallucinogen offenses sentenced in Maryland circuit courts from 2017 through 2019.

TABLE 1. GUIDELINES-ELIGIBLE CRIMINAL SENTENCING EVENTS AND OFFENSES SENTENCED IN MARYLAND CIRCUIT COURTS, CY 2017 THROUGH 2019

	Offenses		Sentencing Events Included One or More:	
	#	%	#	%
Crimes of violence	8,325	18.6%	5,596	17.5%
Firearms offenses	5,511	12.3%	4,773	14.9%
Other person offenses	10,484	23.4%	8,262	25.9%
Felony narcotics/hallucinogen offenses	5,740	12.8%	5,181	16.2%
Other drug offenses	6,304	14.1%	5,760	18.0%
Property offenses	8,470	18.9%	6,555	20.5%
Total	44,834		31,960	

Note. Sentencing event percentages do not sum to 100% as a sentencing event may contain multiple offenses from multiple crime categories.

TABLE 2. TYPE OF DRUG AND OFFENSE MODE FOR FELONY NARCOTICS/HALLUCINOGEN OFFENSES SENTENCED IN MARYLAND CIRCUIT COURTS, CY 2017 THROUGH 2019

	#	%	Valid %
Type of drug			
Cocaine	2,683	46.7%	52.4%
Heroin	1,809	31.5%	35.3%
Oxycodone	190	3.3%	3.7%
Other narcotics (e.g., fentanyl, methadone)	376	6.6%	7.3%
PCP	38	0.7%	0.7%
LSD	7	0.1%	0.1%
Hallucinogenic drug not identified	15	0.3%	0.3%
Narcotic not identified	622	10.8%	-
Offense Mode			
Completed offenses	4,899	85.3%	
Conspiracies	801	14.0%	
Attempts	39	0.7%	
Solicitations	1	<0.1%	
Total offenses	5,740		

Note. Valid percentage excludes cases where the narcotic drug was not identified (n=622). For the purposes of the *Type of Drug* graph displayed in the *Sentencing Snapshot*, those offenses where the hallucinogenic drug was not identified, as well as offenses involving PCP or LSD, were collapsed into the other drug category.



TABLE 3. CHARACTERISTICS OF SENTENCING EVENTS INVOLVING ONE OR MORE FELONY NARCOTICS/HALLUCINOGEN OFFENSES IN MARYLAND CIRCUIT COURTS, CY 2017 THROUGH 2019

	All Felony Narcotics/Hallucinogen Offenses		No Sentence or Probation Only		Guidelines-Applicable Sentence >0 and <=1 Year		Guidelines-Applicable Sentence >10 Years	
	#	%	#	%	#	%	#	%
Prior record score								
None	1,072	20.9%	293	77.7%	420	22.1%	3	1.3%
Minor	1,082	21.1%	62	16.4%	452	23.8%	3	1.3%
Moderate	1,274	24.8%	15	4.0%	409	21.6%	24	10.7%
Major	1,699	33.1%	7	1.9%	616	32.5%	194	86.6%
Involvement in the Criminal Justice System (CJS) at the time of the offense								
On probation, parole, or comparable status	1,450	28.2%	11	2.9%	379	19.9%	157	70.1%
None	3,683	71.8%	366	97.1%	1,522	80.1%	67	29.9%
Total Offender Score								
0	968	18.9%	272	72.1%	375	19.7%	1	0.4%
1	775	15.1%	74	19.6%	348	18.3%	3	1.3%
2	347	6.8%	8	2.1%	134	7.0%	2	0.9%
3	554	10.8%	12	3.2%	208	10.9%	5	2.2%
4	603	11.7%	4	1.1%	193	10.2%	10	4.5%
5	489	9.5%	0	0.0%	172	9.0%	15	6.7%
6	925	18.0%	5	1.3%	367	19.3%	56	25.0%
7+	471	9.2%	2	<0.1%	104	5.5%	132	58.9%
Total sentencing events	5,181		381		1,927		226	

Note. Frequencies for the prior record score, involvement in the CJS at the time of the offense, and the total offender score were calculated at the sentencing event level to avoid double-counting defendants who were convicted of multiple offenses. Percentages are based on non-missing data. Fifty-four sentencing events including one or more felony narcotics/hallucinogen offense were missing the prior record score, including 4 sentencing events that received no sentence or probation only, 30 sentencing events that received a guidelines applicable sentence of greater than zero and less than or equal to 1 year, 2 sentencing events that received a guidelines-applicable sentence of greater than 10 years. Forty-eight sentencing events involving one or more felony narcotics/ hallucinogen offenses were missing involvement in the CJS at the time of the offense, including 4 sentencing events that received no sentence or probation only, 26 sentencing events that received a guidelines applicable sentence of greater than zero and less than or equal to 1 year, and 2 sentencing events that received a guidelines-applicable sentence of greater than 10 years. Forty-nine sentencing events involving one or more felony narcotics/ hallucinogen offense were missing the total offender score, including 4 sentencing events that received no sentence or probation only, 26 sentencing events that received a guidelines applicable sentence of greater than zero and less than or equal to 1 year, and 2 sentencing events that received a guidelines-applicable sentence of greater than 10 years.



TABLE 4. INCARCERATION FOR FELONY NARCOTICS/HALLUCINOGEN OFFENSES IN MARYLAND CIRCUIT COURTS, CY 2017 THROUGH 2019

	All Felony Narcotics/Hallucinogen Offenses		Guidelines-Applicable Sentence >0 and <=1 Year		Guidelines-Applicable Sentence >10 Years		No Firearms or Other Weapons Offense		Co-Convicted of a Firearms or Other Weapons Offense	
	#	%	#	%	#	%	#	%	#	%
Incarcerated										
Yes	4,735	82.5%	2,062	100.0%	271	100.0%	4,256	81.7%	479	90.7%
No	1,005	17.5%	0	0.0%	0	0.0%	956	18.3%	49	9.3%
Incarcerated post-sentence										
Yes	3,198	55.7%	561	27.2%	271	100.0%	2,444	46.9%	430	81.4%
No	2,542	44.3%	1,501	72.8%	0	0.0%	2,768	53.1%	98	18.6%
Total	5,740		2,062	35.9%	271	4.7%	5,212		528	

Note. Post-sentence incarceration includes jail/prison time and home detention and excludes credit for time served prior to sentencing.

TABLE 5. SENTENCE LENGTH DISTRIBUTION FOR FELONY NARCOTICS/HALLUCINOGEN OFFENSES SENTENCED IN MARYLAND CIRCUIT COURTS, CY 2017 THROUGH 2019

	Total Sentence		Guidelines-Applicable Sentence	
	#	%	#	%
Overall mean sentence	8.3 Years		2.6 Years	
No sentence/probation only/fully suspended sentence	386	6.7%	1,005	17.5%
>0 & <=6 months	101	1.8%	1,528	26.6%
>6 months & <=1 year	129	2.2%	534	9.3%
>1 year & <=18 months	172	3.0%	663	11.6%
>18 months & <=2 years	115	2.0%	184	3.2%
>2 years & <=3 years	407	7.1%	293	5.1%
>3 years & <=4 years	269	4.7%	255	4.4%
>4 years & <=5 years	805	14.0%	394	6.9%
>5 years & <=6 years	190	3.3%	101	1.8%
>6 years & <=7 years	363	6.3%	164	2.9%
>7 years & <=8 years	303	5.3%	111	1.9%
>8 years & <=9 years	19	0.3%	32	0.6%
>9 years & <=10 years	1,047	18.2%	205	3.6%
>10 years & <=19 years	762	13.3%	218	3.8%
>19 years & <=20 years	672	11.7%	53	0.9%
Total	5,740		5,740	

Note. The total sentence includes jail/prison time, credit for time served, home detention, and suspended time. The guidelines-applicable sentence includes jail/prison time, credit for time served, and home detention, and excludes suspended time.



TABLE 6. INCARCERATION FOR FELONY NARCOTICS/HALLUCINOGEN OFFENSES IN MARYLAND CIRCUIT COURTS, BY FIREARMS OR OTHER WEAPONS OFFENSE CONVICTION AND OFFENDER SCORE, CY 2017 THROUGH 2019

	All Felony Narcotics/ Hallucinogen Offenses	No Firearms or Other Weapons Offense Co-Conviction	Co-Convicted of a Firearms or Other Weapons Offense Conviction
Offender Score=0			
# (%)	1,034 (18.2%)	956 (18.5%)	78 (14.8%)
Mean total sentence	4.8Y	4.5Y	8.4Y
Mean guidelines-applicable sentence	6.5M	5.4M	1.7Y
Offender Score=1			
# (%)	839 (14.8%)	761 (14.7%)	78 (14.8%)
Mean total sentence	6.5Y	6.2Y	9.4Y
Mean guidelines-applicable sentence	1.0Y	10.8M	2.2Y
Offender Score=2			
# (%)	384 (6.8%)	341 (6.6%)	43 (8.2%)
Mean total sentence	7.0Y	6.5Y	10.9Y
Mean guidelines-applicable sentence	1.5Y	1.3Y	3.5Y
Offender Score=3			
# (%)	610 (10.7%)	563 (10.9%)	47 (8.9%)
Mean total sentence	8.3Y	8.2Y	9.9Y
Mean guidelines-applicable sentence	2.1Y	1.9Y	4.3Y
Offender Score=4			
# (%)	685 (12.0%)	618 (12.0%)	67 (12.7%)
Mean total sentence	9.0Y	8.8Y	11.6Y
Mean guidelines-applicable sentence	2.7Y	2.5Y	4.6Y
Offender Score=5			
# (%)	535 (9.4%)	480 (9.3%)	55 (10.5%)
Mean total sentence	9.7Y	9.5Y	11.5Y
Mean guidelines-applicable sentence	3.4Y	3.2Y	5.5Y
Offender Score=6			
# (%)	1,035 (18.2%)	939 (18.2%)	96 (18.3%)
Mean total sentence	10.6	10.5Y	12.1Y
Mean guidelines-applicable sentence	3.7Y	3.5Y	6.0Y
Offender Score=7+			
# (%)	565 (9.9%)	503 (9.7%)	62 (11.8%)
Mean total sentence	12.0Y	11.7Y	14.3Y
Mean guidelines-applicable sentence	6.9Y	6.4Y	10.8Y
Total	5,740	5,212	528

Note. The total sentence includes jail/prison time, credit for time served, home detention, and suspended time. The guidelines-applicable sentence includes jail/prison time, credit for time served, and home detention, and excludes suspended time. Figures are based on non-missing data. Fifty-three felony narcotics/hallucinogen offenses were missing the total offender score, including 51 sentencing events with no firearms or other weapons offense co-conviction, and 2 sentencing events with a co-conviction for a firearms or other weapons offense.



EXCLUDED OFFENSES

Certain felony narcotics and hallucinogen offenses were excluded from analyses, including subsequent drug offenses that carry enhanced penalties and felony narcotics/hallucinogen offenses outside the scope of the sentencing provisions provided in CR, § 5-608 or § 5-609. Table 11 provides a list and count of offenses excluded from the present analyses.

TABLE 7. FELONY NARCOTICS/HALLUCINOGEN OFFENSES EXCLUDED FROM ANALYSES, CY 2017 THROUGH 2019

	#
Felony narcotics/hallucinogen offenses subject to double the statutory maximum, per CR § 5-905	75
Knowingly violated CR, § 5-602 with a mixture of heroin and fentanyl or any analogue of fentanyl; or fentanyl or any analogue of fentanyl (CR, § 5-608.1)	25
Subsequent felony narcotics/hallucinogen offenses subject to 25-year statutory maximum, per CR, § 5-608(c) or § 5-609(c)	13
Subsequent felony narcotics/hallucinogen offenses subject to 40-year statutory maximum, per CR, § 5-608(d) or § 5-609(d)	8
Subsequent felony narcotics/hallucinogen offenses subject to 10-year mandatory minimum, per former CR, § 5-608(b) or § 5-609(b) (sentence date prior to 10/1/2017) ⁴	13
Subsequent felony narcotics/hallucinogen offenses subject to 25-year mandatory minimum, per former CR, § 5-608(c) or § 5-609(c) (sentence date prior to 10/1/2017) ⁴	3
Subsequent felony narcotics/hallucinogen offenses subject to 40-year mandatory minimum, per former CR, § 5-608(d) or § 5-609(d) (sentence date prior to 10/1/2017) ⁴	0
Total	137

⁴ Following passage of the Justice Reinvestment Act in 2016 (SB1005/Chapter 515 of the Laws of Maryland 2016), the 10-year, 25-year, and 40-year mandatory minimum penalties, previously provided under CR, § 5-608 and CR, § 5-609, were repealed and replaced with maximum penalties of 20 years, 25 years, and 40 years, respectively, for subsequent drug offenders. Subsequent drug offenders convicted pursuant to CR, § 5-608(b) or § 5-609(b), which provides for a 20-year statutory maximum for certain subsequent drug offenders, on or after October 1, 2017, are included in the present analyses as the statutory maximum is identical to that provided under CR, §§ 5-608(a) and 5-609(a). A total of four felony narcotics/hallucinogen offenses were sentenced under CR, § 5-608(b) or § 5-609(b) from October 1, 2017 through 2019.